

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

KENITH L. TONEY,

Petitioner,

v.

CIVIL ACTION NO. 5:04-cv-00345
(Criminal No. 5:02-cr-00229)

UNITED STATES OF AMERICA,

Respondent.

JUDGMENT ORDER

By Standing Order entered on April 12, 2004, and filed in this case on May 20, 2002, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation [“PF&R”]. Magistrate Judge VanDervort filed his PF&R on August 2, 2007 [Docket 78]. In that filing, the magistrate judge recommended that this Court deny Petitioner’s Motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct his Sentence, dismiss this case, and remove this matter from the Court’s docket.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Here, objections to Magistrate Judge VanDervort’s PF&R were due by August 17, 2007, pursuant to 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). Petitioner has failed to object to the PF&R.

Having reviewed the Proposed Findings and Recommendation filed by Magistrate Judge VanDervort, the Court adopts the findings and recommendations contained therein. Accordingly, the Court hereby **DENIES** Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct his Sentence, **DISMISSES** this case, and **REMOVES** this matter from the Court's docket.

The Clerk is further directed to mail a certified copy of this Judgment Order to all counsel of record, Plaintiff, *pro se*, and a copy to Magistrate Judge VanDervort.

ENTER: August 22, 2007



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE